

1 Hon. J. Richard Creatura
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**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

9 NATHEN BARTON,
10 Plaintiff,
11 v.
12 JOE DELFGAUW, et al.
13 Defendants.

CASE NO. 3:21-cv-05610-JRC

**DEFENDANTS' EX PARTE MOTION
FOR EXTENSION OF TIME TO FILE
RESPONSE TO MOTION FOR
JUDICIAL NOTICE OF FRAUD
CONVICTION; ALTERNATIVELY TO
CONTINUE THE MOTION ONE WEEK
SO THAT A RESPONSE CAN BE FILED.**

14 JOE DELFGAUW, XANADU
15 MARKETING INC., STARTER HOME
16 INVESTING INC.

17 Counterclaimants,
18 v.
19 NATHEN BARTON,
20 Counter Defendant.

Noted for: January 3, 2022

21 COMES NOW the Defendants/Counterclaimants JOE DELFGAUW, XANADU
22 MARKETING INC., and STARTER HOME INVESTING INC. (hereinafter, collectively
“these answering parties”) and move this Court for an Extension of Time to Respond to

**EX PARTE MOTION TO EXTEND TIME FOR RESPONSE,
ALTERNATIVELY FOR CONTINUANCE OF MOTION**

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1 Plaintiff's Motion for Judicial Notice of Fraud Conviction. Alternatively, these responding
2 parties ask this Court to continue the motion one week so that they have time to properly
3 respond to the motion.

4 This motion is based on the declaration of counsel and the records and files herein.

5 Dated this 1st day of January, 2022

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s/Donna Gibson
Donna Gibson WSBA 33583
Attorney for Defendant
Attorney for Defendants JOE DELFGAUW,
XANADU MARKETING INC and STARTER
HOME INVESTING INC
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13 EX PARTE MOTION FOR EXTENSION OF TIME TO FILE RESPONSE

14 FACTS

15 Plaintiff filed its for Judicial Notice of Delfgauw's Fraud Conviction on December 22,
16 2021, with a noting date of 1/7/22. See Dkt. 70. Plaintiff also filed four other motions with
17 noting dates of 1/7/22, *See* Dkt. 59, 64, 66, and 68, respectively. Counsel in this case also
18 represents another defendant in a matter with Plaintiff BARTON, where he filed the same a
19 motion to strike affirmative defenses, noted for the same day, 1/7/22.¹ Counsel also has

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22 ¹*See* 3:21-cv-05338-BHS, *Barton v. Serve All, Help All Inc.*, Western District of Washington. Motion filed at Dkt. 59, 64, 66, 68, and 70).

EX PARTE MOTION TO EXTEND TIME FOR RESPONSE, ALTERNATIVELY FOR CONTINUANCE OF MOTION

1 opening briefs due on January 3, 2022 in other matters in this Court², and had several matters
2 in Whatcom County Superior Court were scheduled for hearings between the time of filing of
3 this motion and the due date. *See* Declaration of Donna Gibson.

4 Counsel for Defendant is a solo practitioner and due to the COVID-19 pandemic,
5 counsel's staff and counsel are currently working from home. *See* Declaration of Donna
6 Gibson. Counsel was in a motor vehicle accident on June 26, 2021 and is suffering from two
7 partial thickness rotator cuff tears which were recently diagnosed on December 17, 2021 after
8 an MRI on December 16, 2021. Over use of her hands, arms and shoulder, doing things such
9 as typing, increases the pain in her shoulder and causes headaches and vision issues. *See*
10 Declaration of Donna Gibson.

11 Further, between the time this motion was filed and the response was due, was
12 Christmas Eve and Christmas Day, record breaking cold and snow and windstorms on Dec
13 24, 25, 26, 27 and again on December 30. Internet in Anacortes was intermittent during those
14 times.

15 Counsel is working closely with these answering parties' in-house counsel, who is in
16 Michigan and is more familiar with the facts and the underlying issues brought up in Plaintiff's
17 motion. However, due to the distance, the time difference and the holidays, Counsel have not
18 had time to adequately confer on this matter.

19 *See* Declaration of Donna Gibson.

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22 ² 2:21-cv-01228-MLP *Austin v. Comm'r of Social Security*, Western District of
Washington.

**EX PARTE MOTION TO EXTEND TIME FOR RESPONSE,
ALTERNATIVELY FOR CONTINUANCE OF MOTION**

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RELIEF REQUESTED

Defendant, through Counsel, respectfully requests that this Court to extend the time to file a response to this motion; alternatively, to continue the motion one week so that a response can be filed.

Respectfully submitted this 1st day of January, 2022.

s/Donna Gibson
Donna Gibson WSBA 33583
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Respectfully submitted this 31st day of December, 2021

s/Donna Gibson
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